

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MINERALS MANAGEMENT SERVICE
OF THE DEPARTMENT OF THE INTERIOR
AND
THE U.S. ARMY CORPS OF ENGINEERS
OF THE DEPARTMENT OF THE ARMY**

Title I. Purpose

Pursuant to the provisions of Section 8(k)(2)(D) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337(k)(2)(D), as amended by P.L. 103-426), this Memorandum of Agreement (MOA) is entered into by the Department of the Interior (DOI)'s Minerals Management Service (MMS) and the Department of the Army's Corps of Engineers (Corps) concerning the use of sand, gravel, and shell resources on the Outer Continental Shelf (OCS) for the Storm Damage Reduction Project, Myrtle Beach, South Carolina (Project) described herein.

It is the intention of the MMS and the Corps that this MOA establish procedures to ensure timely coordination and cooperation between the two agencies as each carries out its responsibilities related to the use of such resources for the Project.

Title II. Project Description

The Project is being undertaken for the purpose of shore protection by the Corps' Charleston District. It was authorized by Congress in Section 101(a)(20) of the Water Resources Development Act of 1990 (P.L. 101-640). Pursuant to Section 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2213, P.L. 99-662), funding for the Project shall be based upon the sharing of total costs (including the cost of borrow sites) between the Federal government (65%) and the local sponsors (35%).

The Project site is located in Horry and Georgetown Counties in South Carolina, and consists of three separate reaches totaling 25.4 linear miles of shoreline. The authorized duration of the Project is fifty years, including initial construction and periodic nourishment, as measured from the completion of initial construction of the last reach. The Project is more particularly described in the General Design Memorandum, *Myrtle Beach Shore Protection Project* (revised March 1993), which is incorporated herein by reference.

This MOA is only applicable to the initial construction phase for Reach 3 of the Project (Garden City/Surfside Beaches) as described in the referenced March 1993, General Design Memorandum. Reach 3 begins from station 498+08 at Myrtle Beach State Park to station 474+50 where it extends to station 91+50 south of the Georgetown County line for a total distance of 7.7 miles. The beach fill material will be obtained from an area located in State and Federal waters, identified as the Surfside borrow site.

The MMS and the Corps acknowledge that the Project is authorized for a period of 50 years, during which time the need for further sand for periodic renourishments is recognized. To the extent consistent with the responsibilities of the Secretary of the Interior under the OCSLA and other Federal law, the MMS intends to enter into future Memoranda of Agreement with the Corps, subsequent to this MOA, for the continued use of Federal sand from the Surfside borrow site for periodic renourishments of Reach 3 (Garden City/Surfside Beaches) for the authorized duration of the Project.

Title III. Provisions

1. The initial construction phase for Reach 3 will utilize the Surfside borrow site for sand resources. A portion of this borrow site is seaward of that line from which the Federal OCS is measured, as the OCS is defined in the OCSLA (43 U.S.C. 1331(a)). This MOA only covers sand resources located seaward of the three-mile limit on the Federal OCS. Fifty percent of the fill material needed for the initial construction phase of Reach 3 shall be taken from the OCS portion of the Surfside borrow site.

2. The MMS and the Corps recognize that, in general, planning and coordination between their agencies will ensure that responsibilities under the OCSLA, Federal water resource authorities, and specific Congressionally-authorized projects are carried out and accommodated in an efficient and timely manner so that Corps project schedules will not be unnecessarily delayed or compromised. To that end, with respect to the initial construction phase for Reach 3, the Corps and the MMS agree to the following:

A. Negotiated Agreement.

It is the position of the MMS that, in lieu of conducting a competitive sale for the granting of a lease for a mineral on the OCS other than oil, gas and sulphur pursuant to Section 8(k)(1) of the OCSLA (43 U.S.C. 1337(k)(1)), the Secretary of the Interior is authorized, pursuant to Section 8(k)(2)(A)(i) of the OCSLA (43 U.S.C. 1337(k)(2)(A)(i)), to negotiate an agreement with any person for the use of certain specified minerals (including sand), if such minerals are to be used in a public shore protection program.

The MMS has determined that the initial construction phase for Reach 3 meets the requirements of Section 8(k)(2)(A)(i) of the OCSLA. Therefore, it is the intention of the MMS to exercise such authority by negotiating with Horry County, an agreement (negotiated agreement) to convey the rights to, and establish the terms and conditions for the use of, the OCS sand resources for the initial construction phase for Reach 3.

B. Availability of OCS Sand Resources at No Cost to the Corps.

The Federal OCS sand resources located within the Surfside borrow site specified in the March 1993, General Design Memorandum shall be available for use by the Corps for fifty percent of the fill material needed for the initial construction phase for Reach 3,

consistent with the terms and conditions of the negotiated agreement. In accordance with Section 8(k)(2)(B) of the OCSLA (43 U.S.C. 1337(k)(2)(B)), no fee may be assessed directly or indirectly against the Corps for such use of the resources.

C. Prohibition on Other Activity at the Borrow Site.

The MMS shall not: (1) permit any prospecting or exploration for, (2) offer for lease, or (3) negotiate any agreements for the use of, any minerals within the Surfside borrow site during the term of the initial construction phase for Reach 3, or allow activity related to the possible development of such resources during such term.

D. Notification to Corps of OCS Activity Near the Borrow Site.

The MMS shall notify the Corps of any OCS activity within the jurisdiction of the DOI that is in close proximity to the borrow site, and that may adversely affect (including an increase in cost) the Corps' ability to use the OCS sand resources for the initial construction phase for Reach 3.

E. Environmental Studies.

The Corps has provided the MMS with the following documents which contain environmental information and analyses with respect to the Project:

- Final Environmental Impact Statement, Myrtle Beach and Vicinity Shoreline Protection Project, Horry and Georgetown Counties, South Carolina, January 1993 (DOI's comments on the Draft EIS were incorporated into the Final EIS);
- General Design Memorandum, Myrtle Beach, South Carolina Shore Protection Project, March 1993.

Consistent with DOI's general stewardship responsibilities for natural resources under its jurisdiction, and pursuant to Section 20 of the OCSLA (43 U.S.C. 1346), all environmental studies necessary for the commencement of the initial construction phase for Reach 3 and utilization of the OCS sand resources have been completed within the required time limits. The acquisition of new information or carrying out of new analyses, other than those required by the Corps' own authorities, shall be the responsibility of the MMS and shall not be required of the Corps without the concurrence of the Corps.

F. Sharing of Information.

Consistent with the intention stipulated by both agencies in Title I, the Corps and the MMS agree to: (1) share all information needed for or generated from the initial construction phase for Reach 3, including the sharing of implementation and other applicable schedules; and (2) provide such information to the requesting agency as expeditiously as possible.

G. Resolution of Disputes.


In the case of a substantial disagreement between the Corps and the MMS with respect to any aspect or decision to implement the initial construction phase for Reach 3, the undersigned shall designate a senior management official in their respective agencies to determine an appropriate course of action, including a firm and expeditious schedule, to resolve such disagreement. Any such resolution shall recognize and fairly balance the will of Congress in authorizing the initial construction phase for Reach 3 with the administration of OCS resources under the OCSLA.

H. Notification of Congress.

After the execution of this MOA, in accordance with Section 8(k)(2)(D) of the OCSLA (43 U.S.C. 1337(k)(2)(D)), the MMS will notify the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate concerning the use of the OCS sand resources for the initial construction phase for Reach 3.


I. Effective Date.

This MOA shall become effective when signed by the Program Director, Office of International Activities and Marine Minerals of the MMS, and the Chief, Policy Review and Analysis Division, Directorate of Civil Works of the Corps. This MOA may be amended or revoked at any time by mutual agreement between the agencies, and expires upon completion of the initial construction phase for Reach 3.



Program Director
Office of International Activities
and Marine Minerals
Minerals Management Service
U.S. Department of the Interior

Date: APR 8 1996



Chief
Policy Review and Analysis Division
Directorate of Civil Works
U.S. Army Corps of Engineers
Department of the Army

Date: 15 APR 1996